
Citation:

Pettigrew, M (2016) American Policy British Politics: Whole of Life Imprisonment and Transatlantic Influence. International Journal of Comparative and Applied Criminal Justice. ISSN 0192-4036 DOI: <https://doi.org/10.1080/01924036.2016.1184173>

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American Politics, British Policy: Whole of Life Imprisonment and Transatlantic Influence

Since the abolition of the death penalty, life imprisonment in England and Wales has had a literal meaning with exceptional rarity. Now though, in the rejection of perceived interference by the European Court of Human Rights in domestic sentencing, the politics of whole of life imprisonment have become exposed, specifically, in the widening applicability of the tariff to those who kill police officers or prison guards. Borrowing from the politics of capital punishment in the USA, in both 'acting out' after a particular crime, and the prioritising of victim groups, the most severe penalty in England and Wales is increasingly beginning to mirror how the most severe punishment across the Atlantic is used, represented, and politicised.

Keywords: Policy Imitation; Whole of Life Imprisonment; Capital Punishment; Aggravating Sentencing Factors; Criminal Justice Politics; Sentencing

At the end of December 2015 there were fifty eight people serving a whole of life sentence in England and Wales: fifty six men, and two women (Ministry of Justice 2016). Before 2003 it was the Home Secretary who imposed a whole of life tariff, yet in *R (on the application of Anderson) v Secretary of State for the Home Department* (2002)), the House of Lords held that the Home Secretary could no longer impose the tariff as he saw fit; that was a role for the judiciary. Thus it was that the whole of life tariff found its way into legislation under the 2003 Criminal Justice Act. Under the 2003 Act a whole of life tariff is considered only when the seriousness of the offence is exceptionally high, involving, according to Schedule 21 of the Act:

(a) the murder of two or more persons, where each murder involves any of the following:

(i) A substantial degree of premeditation or planning,

(ii) the abduction of the victim, or

(iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation

(c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

(d) a murder by an offender previously convicted of murder.

In January 2015 the Criminal Justice and Courts Act came into being and those scenarios where life without parole could be applied was expanded. Section 27(1) of the Act, which amends the 2003 Criminal Justice Act, adds "the murder of a police officer or prison officer in the course of his or her duty" (Criminal Justice and Courts Act 2015 s.27(2)). It will be contended here that this latest

legislative revision represents a partial convergence in how life without parole is coming to be used in England and Wales with how the death penalty is used in the United States.

Part one of this paper overviews the events leading to the expansion of life without parole sentencing and the preceding hostility between the police force and the executive. Part two documents how similar aggravating eligibility factors for the death penalty have been used, politically, in the United States, making a comparison between the two jurisdictions and penalties. Part three posits this evolution in whole of life sentencing as the latest piece of policy convergence, at least imitation, from across the Atlantic. Finally, the paper concludes with a cautious warning of where such imitation might lead in the development of the most severe sentence available in England and Wales.

Part One: Expanding Life without Parole in England and Wales

The quiet passage of the legislative amendment in the 2015 Criminal Justice and Courts Act, the widening scope of the applicability of the tariff, stands in stark contrast to its announcement. Tensions between the former British coalition government and the police - the main publicised beneficiaries of this amendment¹ - were particularly strained over the life of the coalition government (somewhat returning to that state under the newly elected Conservative government (Siddique 2014; Addley 2014; Travis 2015)). Animosity toward the government, and particularly the Home Secretary, deepened over a relatively short time with severe budget cuts applied to the police (Shaw 2012, Travis 2013). Discontent was public and bitter, demonstrated by street protests, appeals for public support, and the heckling of government ministers (Associated Press 2012, Wardrop and Gardham 2010, Beckford 2012, Peachey 2012). A Home Secretary without the support of the police is surely an untenable position over the long term² so any move to ameliorate tensions became politically necessary. Somewhat cynically, after the high profile murders of two police officers, Nicola Hughes and Fiona Bone in September 2012, and the sympathy and support given to the police by the public, both after those murders and with regard to budget cuts, the issue was seized upon by the Home Secretary as a means to demonstrate support for the police (symbolically if not financially). Thus it was, at the annual police federation conference in 2013 (the preceding year the Home Secretary was greeted at the same conference with a chorus of jeering and heckling, facing unprecedented calls from the police to resign (Beckford 2012)) that the announcement to widen the scope of whole life tariffs was made. Such a move was, undoubtedly, inherently political. Tragic as the murder of those police officers was, the perpetrator was actually sentenced to whole of life imprisonment without the expansion that has since occurred. The amendment motivated, on the surface, by a double murder of two police officers was unnecessary to ensure the offender's whole

¹ Such is the extremely low number of murders of prison officers the information is not even categorised by the Ministry of Justice.

² The Home Secretary is legally accountable for national security and for the role that the police service plays in delivering any national response to policing issues that arise. In what the print media termed 'proving her Thatcherite credentials' in the context of speculating the next Conservative party leader (Addley 2014; Dominiczak 2014), the Home Secretary a year later would revise her attitude towards the police, returning to a hard-line approach that would introduce further budget cuts (Whitehead 2015; Travis 2015). Further spending reduction has now been suspended in light of recent European terrorist attacks, although resources are diverted towards intelligence policing (Shaw 2015; BBC News 2015; Murphy 2015).

life detention. The actual problem was a political one, not a legal or criminal justice one, and true to the intensely political nature of whole of life tariffs, the amendment was borne of political thinking. Announcing the intention to amend the 2003 Criminal Justice Act, the Home Secretary cited the names of those police officers who had been killed in the preceding twelve months, specifically noting the murders of PCs Bone and Hughes; and the reaction to them (May 2013).

The Home Secretary elaborated,

The murder of a police officer is a particularly appalling crime. To attack and kill a police officer is to attack the fundamental basis of our society.

We ask police officers to keep us safe by confronting and stopping violent criminals for us. We ask you to take the risks so that we don't have to. And sometimes you are targeted by criminals because of what you represent.

That is why I can announce today that, subject to consultation with the Sentencing Council, the Government will change the law so that the starting point for anybody who kills a police officer should be a life sentence without parole.

We are clear: life should mean life for anyone convicted of murdering a police officer. (May 2013)

In the 70 preceding years before the amendment, 1945 – 2015, 87 police officers had been murdered (Police Roll of Honour Trust enquiry #334135). In the single year before the legislative amendment, April 2014 to March 2015, there were a total of 534 murders in England and Wales (significantly reduced from a decade before when, between April 2004 and March 2005, there were 868 recorded murders (ONS 2015)). The statistics reveal then that the murder of police officers is a rare event. Yet, expanding whole of life to include those who murder police officers or prison guards is not about offering a quasi remedy, in the form of deterrence, to a particular problem. The death sentence was mandatorily imposed on all convicted murderers prior to 1957 and all capital murderers thereafter, still the noose is not seriously reconsidered for reintroduction owing to any deterrent value,

“Much in the same way that the deterrence argument is no longer central, or even attendant, to debates on capital punishment in the USA...similarly the deterrent value of the whole of life term is minimal” (Pettigrew 2015:299)

Indeed it is relatively settled that presumptive minimum and mandatory sentencing schemes have little deterrent value (Fitz-Gibbon 2016:53). Instead, just as in the American context of aggravating factors of victim status in death penalty statutes, expansion is offering a ‘token of esteem’, valorising the recipients and, in the case of the UK, healing to some extent a troubled relationship between the executive and the police. Honouring victims though has been a hallmark in the punitive turn in contemporary penalty (Garland 2001:143; Pratt 2007:18; Fitz-Gibbon 2016:53; Pratt & Clark 2005:306). As Garland notes, it has become commonplace for politicians and elected officials to invoke the memory of crime victims to legitimise harsher criminal penalties,

“The need to reduce the present or future suffering of victims functions today as an all-purpose justification for measures of penal repression, and the political imperative of

being responsive to victims' feelings now serves to reinforce the retributive sentiments that increasingly inform penal legislation. If victims were once the forgotten, hidden casualties of criminal behaviour, they have now returned with a vengeance, brought back into full public view by politicians and media executives who routinely exploit the victim's experience for their own purposes" (Garland 2001:143).

Under the guise of honouring fallen police officers, the Home Secretary was able to temper hostilities with the police and garner support for a legislative amendment that would signify opposition to the European Court of Human Rights (ECtHR).

Revealing the politicised nature of whole of life tariffs in England and Wales, the widening applicability of the sentence served a secondary political purpose: a public rebuttal of the 'mission creep' and perceived intrusion into domestic sovereignty by the ECtHR (Conservatives 2014). After a series of unfavourable rulings for the UK regarding prisoner voting rights and the extradition of offenders (Slack 2011; Hastings 2013; Conservatives 2014), the Strasbourg court made another unfavourable decision with regard to whole of life tariffs (*Vinter and Others v United Kingdom* 2013). The court questioned the adequacy of the executive release mechanism from the whole of life tariff, limited to compassionate grounds when the prisoner has a prognosis of less than 3 months to live. The court, instead, favoured a review of imprisonment, recommending an initial starting point after 25 years, to determine the continued penological justifications for keeping a prisoner detained. This review would go further than that previously promised by former Home Secretaries, where taking into account principles of retribution and deterrence and any "exceptional progress" made whilst in prison, the whole life tariff could be substituted for a determinate term. Additionally, the court ruled that the executive release mechanism must be transparent, so a prisoner may know at the point of sentence what he or she must do in order to be considered for release. The *Vinter* decision was strongly rejected by the UK; domestic politicians asserting no such changes would be made, that the court was attempting to undermine British sovereignty and, if necessary, Britain would withdraw from the European Convention on Human Rights and the remit of the court (Hastings 2013; Conservatives 2014; BBC News, 2013; EurActiv News, 2013; Kirkup, 2013). The legislative action of widening the applicability of whole of life to those who murder police officers under the Criminal Justice and Courts Act 2015 was a strong marker of defiance to the European Court.

Whilst whole of life tariffs are, according to the 2003 Criminal Justice Act, in place to punish the very worst murder types, the amendment regarding police officers makes no mention of intrinsic aggravating details, sexual assault or torture, for example. Instead, what makes a person eligible for whole of life sentencing in the instance of murdering a police officer is simply the status of the victim. It must be noted that, in contrast, the threshold level beneath whole of life, contained in the 2003 Criminal Justice Act s. 21(5) where the starting point for tariff consideration is 30 years, includes scenarios of very serious homicides. With the latest amendment, murder for hire, the murder of witnesses to criminal proceedings, or murder using explosives would not be eligible for a whole of life tariff whereas the murder of a police officer would invite its application. The inclusion of police officers into the upper threshold was nothing more than a symbolic gesture based on victim status, it was not announced based on revulsion and condemnation of a particular behaviour. What is important to note, however, is the origins and precedent for this action; in the USA. It is contended here that the widening scope of whole of life is a subtle piece of policy imitation disguised by its origin, not from whole of life sentencing in the United States, but in death

sentencing policy and practice, a punishment which the UK resolutely opposes (Foreign & Commonwealth Office 2011).

Part Two: Politicizing Punishment across the Atlantic

“The importance of the role of aggravating factors to provide guidance to sentencers is stressed in a number of Supreme Court cases interpreting the Eighth Amendment. The Court has emphasized that the application of the death penalty cannot be arbitrary and capricious, and that the death penalty must be administered “in a way that can rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not”. Thus, the Eighth and Fourteenth Amendments require that some sort of factors be used to effectively determine the category of murderers who are eligible for the death penalty” (Kirchmeier 2006:6).

An important feature in capital sentencing then, aggravating factors are the means, theoretically at least, to distinguish those who deserve death from those who do not. How they are used in practice, however, with the increasing number of eligibility factors and a ‘hands off’ approach by the United States Supreme Court in their regulation, has led some researchers to describe the ‘deregulation of death’ (Williams 2000). That is to say, aggravating factors no longer regulate those who ‘deserve’ death but have expanded death penalty statutes to such an extent, unchallenged by the Supreme Court, to exponentially widen the pool of death eligible murders. The result has been increasingly arbitrary capital sentencing schemes (Sharon 2011).

Yet, in *Zant v Stephens* (1983) the Supreme Court did put forth a narrowing requirement for aggravating factors, making plain that such factors must “genuinely narrow” the pool of death eligible offenders to the particularly culpable, in effect, ‘the worst of the worst’. Yet the same court has since abandoned any regulation of the proliferation of aggravating factors, retreating from the principles of *Furman v Georgia*, that the death penalty must not be applied in an arbitrary manner (Sharon 2011). Aggravating factors were to provide consistency in death sentencing, juror direction in finding the small group of offenders who were particularly ‘death-worthy’; this is the commonality amongst the different views of the narrowing requirement,

“Many scholars have envisioned the narrowing requirement in qualitative terms, as a command that states render death eligible only the “worst of the worst” offenders. Others have seen the requirement as containing both qualitative and quantitative prongs, such that states must not only identify a more culpable group of offenders, but must also ensure that this group is substantially smaller than the universe of all first-degree murderers. Still others have framed the narrowing requirement in terms of the outcome it seeks to achieve: consistency in death sentencing” (Sharon 2011:225)

In the field of death sentencing the inclusion of aggravating factors in death penalty statutes has, instead of serving the constitutionally required purpose of regulating the use of the death penalty, come to serve political ends. Such is the litany of aggravating factors that they apply to nearly every first degree murder (Sharon 2011:232). They have been added to capital statutes “like Christmas

tree ornaments” (Simon and Spaulding 1999:82), motivated by political exigency rather than a particular effort to truly identify the most culpable murderers (Sharon 2011:232). The widening of whole of life imprisonment in England and Wales is a dichotomy of two politically motivated ways in which similar death penalty victim status aggravating factors have been used in the United States. Firstly, valorizing a particular community, and secondly responding to, ‘acting out’, after a particular crime. Both political uses have a strong American lineage.

As of June 2015 there were 19 abolitionist American states, and 31 states with active death penalty statutes (in addition to the federal death penalty, and a death penalty statute covering the US military (Death Penalty Information Center 2015a)). In the same month, 25 of those active state death penalty statutes contained at least one provision in which the murder of a specific profession³, most commonly the police, would act as an aggravating factor, thus technically permitting the imposition of death in such cases. In addition, 7 abolitionist states had similar provisions whilst their death penalty statutes were active (Death Penalty Information Center 2015b), and a legislative Bill had been authored to add such a factor to the federal statute (Derby 2015). 12 of those retentionist states had more than one such victim status aggravating factor; one state, Tennessee, had 4 such factors, and a further three states (Pennsylvania, South Carolina, and South Dakota) had 3 factors. Examples of such provisions in death penalty statutes are worded with striking similarity, with several exact duplications,

“The victim was a government employee, including peace officers, police officers, federal agents, firefighters, judges, jurors, defense attorneys, and prosecutors, in the course of his or her duties” (California; Colorado; Delaware; Georgia; Idaho; Kentucky; Missouri; Montana; Pennsylvania; South Carolina; South Dakota; Tennessee) (Death Penalty Information Center 2015b).

These examples are far reaching yet other states go even further. In Washington State, for example, such victim status aggravating factors include news reporters (Death Penalty Information Center 2015b). All though share the same purpose; “In the legislative field [aggravating factors] provide a kind of currency through which states seek to recognize various concerns and valorize certain kinds of subjects and situations” (Simon and Spaulding 1999:81). They acknowledge the social worth of the victim by virtue of their profession. After all, any ‘protection’ offered by the law by the existence of such aggravating factors is illusory,

“I just think you need to recognize the secondary purpose of an aggravating circumstance may be to afford recognition to a class, that being peace officers, it certainly does not afford protection in the sense we think of it. The peace officer at issue is already dead” (Chief Criminal Deputy Attorney General for Nevada cited in Simon and Spaulding 1999:94)

To date, in Britain, only prison and police officers are the beneficiaries of such legislative protection with regard to whole of life sentences, leaving the possibility, if American precedent is adhered to, of widening the scope further. It is true that the number of police officers killed in the USA is at a

³ Treason, as an aggravating factor, is excluded from this calculation

higher rate, adjusting for population sizes this is to be expected (in the 10 year period, 2003 – 2013, the FBI has recorded 561 felonious deaths of officers killed in the line of duty (FBI 2013)). In the USA though, just as in the UK, giving special victim status is not based on a preceding ‘problem’ per se. Evidenced in America not just by the relatively low number of police officer homicides in comparison to wider homicide rates (in the most recent available statistics, 2011, there were 14,610 victims of Homicide in the United States (U.S. Department of Justice 2013)) but by police officers being only one group amongst several to which special victim status is attributed. Such status aggravating factors do not appear in the American Law Institute’s model penal code section 210.6 (since withdrawn “in light of the current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment” (ALI 2009)). The Model Penal Code’s guided discretion model, in fact, provided just eight aggravating factors, none based on the profession of the victim. Valorizing professions and groups, however, is just one political use of aggravating factors.

In a similarly American manner, the latest amendment to whole of life sentencing in England and Wales was not only to valorize the policing profession but, simultaneously, a response to a particular crime event. A dual purpose was served by one legislative amendment. Reacting to a particular crime event (so termed when media coverage is extensive) by widening the scope of the most severe punishment available has, like valorizing certain professions, been common practice in the USA as a matter of “political exigency rather than reasoned judgment” (Sharon 2011:235). After the 2001 terrorist attacks in New York, for example, at least ten states added terrorism as an aggravating factor to their death penalty statutes; New York did so within one week of September 11 (Kirchmeier 2006:28). Yet the perpetrators of the terrorist attack, had they survived, would have been eligible for the death penalty under other factors. In a striking parallel, the murderer of the British police officers was also eligible for (and did in fact receive) a whole of life prison term under other aggravating circumstances.

In Florida, in 2005, nine year old Jessica Lunsford was abducted from her home, raped, and then murdered by a convicted sex offender. Media coverage of the case was extensive (see, for example Associated Press 2005; CNN 2005a; 2005b) and after prolific campaigning by the victim’s father Florida enacted the Jessica Lunsford Act. The Act contained provisions for stricter monitoring of sex offenders in the community and an increase in prison terms. Additionally, however, a further aggravating factor was added to the state’s capital statute: “The capital felony was committed by a person designated as a sexual predator or a person previously designated as a sexual predator who had the sexual predator designation removed”. What is pertinent to note, as with the New York example, is that the offender in the case was in fact sentenced to death; the amendment was unnecessary. It did however provide the state with the means to recognise concerns of its citizens, encouraged and enflamed by popular press reporting of the case. A means of acting out after a crime event, communicating outrage and expressing ‘hatred of the criminal other’ (Garland 2010:246; Sharon 2011:235).

The purpose of adding aggravating factors to capital statutes in the aftermath of a crime event, the symbolic action of honoring victims, is even, at times, explicitly recognised in the law making process. Indeed, debates can often centre on the worthiness of victims rather than the death-

worthiness of offenders (Sharon 2011:236). Such as it was in 2002 when, in Colorado, a young pregnant woman was murdered in a particularly brutal manner. The case drew widespread media attention owing to the nature of the murder and the victim's pregnancy (see, for example; KKTV News 2002a; 2002b; Zubeck and Willet 2002). The following year the Colorado legislature responded by adding another aggravating factor to its death penalty statute: "The victim was a pregnant woman, and the defendant intentionally killed the victim, knowing she was pregnant". Just as in the UK example, and as in the New York example after the September 11 terrorist attacks, the defendant was eligible for the most severe punishment before its scope was widened. Yet, that eligibility notwithstanding, the Colorado law was amended and done so with explicit recognition of the murder that preceded it:

"Legislative declaration. (1) The general assembly hereby finds that:

(a) In the summer of 2002, a young woman was brutally murdered in a town in Colorado;

(b) Autopsy results indicate that the young woman was between sixteen and seventeen weeks pregnant at the time of her murder;

(c) Autopsy results further indicate that the young woman's child was a healthy boy who, presumably, would have been alive at birth;

(d) Under current Colorado law, the young woman's murderer can be charged with her murder, but this person cannot be held directly accountable for the termination of her pregnancy;

(e) Justice requires a change to Colorado's law in order to hold persons who assault or murder pregnant women directly and fully accountable for the harm they cause both to the women and to their unborn children" (Colorado Revised Statute Annotation § 18-1.3-1201(5)(q) cited in Kirchmeier 2006:33)

As it transpired, the perpetrator of the murder which precipitated the new aggravating factor was spared the death penalty as a result of a plea deal, not because he was ineligible for death. Clearly, as Kirchmeier notes, "as in the case of other eligibility factor expansions, this expansion of the death penalty served more as a political function, public reassurance and pacification, rather than a fix of an actual criminal justice problem" (Kirchmeier 2006:33).

The widening of whole of life imprisonment in the UK, as a result of a high profile case, 'a media event', is strikingly similar to the widening of the death penalty in Colorado. The Home Secretary, in a political move (Shaw 2013), 'acted out' after the murders of police officers and offered the 'protection' and reassurance of the most severe domestic penalty available in the same manner. On the surface at least, although two different penalties, Britain has started down a path already trodden by American counterparts.

Part Three: Transfer and Imitation

There has been a strong recent history of perceived influence from the United States over domestic, British policy. From the ideological similarities of the Thatcher/Reagan administrations, into the Blair led Government, and since with specific policy drives such as sex offender registration and notification schemes. Indeed, there have been various developments in criminal justice and sentencing that have often been perceived as straightforward imports from the USA: electronic tagging; private prison management; zero tolerance policing; 'three strikes and you're out' (see, for example, Jones and Newburn 2007; 2013; McAlinden 2012). Yet, the expansion of life without parole, whilst striking in its resemblance to the expansion of death penalty statutes, is difficult to place within the policy transfer literature. As Jones and Newburn succinctly argue, policy transfer is not a one dimensional concept (Jones and Newburn 2013; 2007; 2002a; 2002b).

In various ways other authors have similarly broken down cross national influences within the field of crime control and sentencing: 'policy diffusion' (Eyestone 1977); 'lesson drawing' (Rose 1993); 'policy convergence' (Bennett 1991). In this particular instance, it is a feature of death penalty sentencing that is found in life without parole sentencing: the American examples certainly predate the British example but the situation is complicated by the two being different punishments. Whilst some common ground may be found in their status as the most severe punishments, objectively speaking, that are available within each jurisdiction, the situation is immediately complicated when considering the great state variation in the history, use, expansion, and maintenance of death penalties.

Whilst perhaps complicating the literature on policy transfer and convergence, suffice to say it is abundantly clear that both penalties in both jurisdictions have been used to achieve political ends (Sarat 1999; Simon and Spaulding 1999; Kirchmeier 2006). If this latest revision to the scope of life without parole has little impact in terms of sentencing, it has a great weight in its symbolic, rhetoric form. As Newburn notes,

"Decisions are taken, policies implemented, not simply because of their potential impact but, of course, because of how they will be perceived and received by a particular electoral community. They are important for what they 'say' both about political parties and about individual politicians" (Newburn 2002:175)

Moreover, given the historic ideological proximity of the two countries it is unsurprising that the politicising of 'extreme punishment' reserved, theoretically at least, for the 'worst of the worst' offenders, should find its way from the USA to the UK. For some theorists it is the structural and cultural conditions that shape penal responses in each country and convergence of policy is the result in shifts in the economic and social structures and/or changes in cultural sensibilities that, somewhat deterministically, move individual actors towards the adoption of similar penal responses (the structuralist explanation for policy convergence (Jones and Newburn 2002b)). For some, it is the work and motivations of specific actors, choosing to imitate and import policy examples that explains a convergence in policy (the agency led explanation for convergence). For others though, a dualist approach is advocated to understand such events of policy convergence (Jones and Newburn 2002b). It cannot be ascertained in this example whether one or several death penalty statutes were specifically emulated, it cannot even be ascertained if there was any awareness on the part of the Home Secretary that special victim status was so used across the Atlantic. It can only be said, with any degree of certainty, that the end result is strikingly similar. The reasons for using the most

severe penalties in such a way share, in their effect, the same lineage; political favour and support carried by the extension of 'special protection'. That conclusion is lent credence by the falsehood of 'protection'; for any argument of deterrence has become nearly obsolete in discussion of the death penalty (Donohue and Wolfers 2005, 2006; Fagan 2005) and, similarly, is not regarded as having any real force behind whole of life tariffs in the UK (Pettigrew 2015) or, indeed, the type of presumptive minimum and mandatory sentencing schemes that whole of life tariffs are a part of (Fitz-Gibbon 2016:53).

Whilst this piece of policy transfer or policy imitation is somewhat hidden by its placement in two different punishments; on the surface it is perhaps even more difficult to detect given the opposition to capital punishment from the UK. Although Britain vigorously defends its use of life without parole, even in the face of increased hostility from the European Court of Human Rights (*Vinter and Others v United Kingdom*), it is simultaneously at the forefront of championing death penalty abolition (Foreign & Commonwealth Office 2011). As recently as 2011, Britain renewed its commitment to contribute to the decline of the punishment across the world,

"It is the longstanding policy of the UK to oppose the death penalty in all circumstances as a matter of principle...Our goals are:

- i) to further increase the number of abolitionist countries, or countries with a moratorium on the use of the death penalty;
- ii) further restrictions on the use of the death penalty in retentionist countries and reductions in the numbers of executions; and
- iii) to ensure EU minimum standards are met in countries which retain the death penalty" (Foreign & Commonwealth Office 2011)

It is then somewhat contradictory that there is an imitation of how the death penalty is used. Yet, life without parole is so routinely dispensed in the United States that it does not have the potential for political use as the death penalty does, as whole of life does in Britain. Every American state now provides for life without parole (with the exception of Alaska) and, so common is its usage, despite some meagre attempts at regulation by the United States Supreme Court, recipients have included juveniles and those convicted of non-lethal offences.

With the imitation of how capital punishment, as the most severe penalty, has been used in the USA, it is pertinent to consider the slippery slope which the UK, and the Home Secretary, now stand upon. Capital punishment statutes have been expanded to such an extent across America that they have lost much of the power to differentiate between offenders and apply death sentences to only the 'worst of the worst'. Whilst the American Law Institute recommended only eight aggravating factors, some states have written more than double that number into their capital statutes (Arizona 17; Colorado 17; Delaware 18; Florida 17; Louisiana 17; Missouri 19; Pennsylvania 18; Tennessee 20; Utah 17 (Death Penalty Information Center 2015b)).

With populist punitivism never fully relegated in the development of sentencing policy it is all too easy to imagine further widening amendments made to whole life sentencing in the UK as a reaction to a particular crime 'event'. Or, as has been the case in this latest amendment, another group needs

valorising in their work to make Britain safer; paramedics, fire fighters, or member of the armed forces perhaps. As Sharon notes,

“The proliferation of such factors is hard to constrain. Because it is impossible to argue that one victim’s life is more valuable than another, there is pressure to add a new aggravating factor every time a high-profile murder occurs, causing...eligibility to steadily expand based on ‘a slippery slope of what-about-hims’ designed to accommodate the ‘fundamental equality of each survivor’s loss’” (Sharon 2011:237)

In the American context, the political exigency found by offering an illusory protected status under the most severe punishment has diluted the pool of death eligible offenders so as to virtually nullify the purpose of the death penalty as being applicable to the very worst murder cases. Already England and Wales is an outlier in Europe in its use of whole of life prison sentences, railing against the dominant philosophy of Europe that is set against the denial of parole possibility in life sentencing (Van Zyl Smit 2010). Should the life without parole sentence be ‘politically’ abused, as a means of acting out after a particular crime, or to valorise a particular group, then the UK is set to move, ideologically, even closer to the USA and further away from Europe. Before imitating the American example, however, it would be pertinent to examine how such political uses have affected the criminal justice function of punishment and increased the arbitrariness in imposing the most severe criminal sanction.

References

Addley, E. (2014) ‘Theresa May: Conservatives’ ‘Hammer of Cops’ Has No 10 in her Sights’, The Guardian, May 23

ALI (American Law Institute) (2009) ‘Report of the Council to the Membership of the American Law Institute on the Matter of the Death Penalty’ [available online at https://www.ali.org/media/filer_public/3f/ae/3fae71f1-0b2b-4591-ae5c-5870ce5975c6/capital_punishment_web.pdf] [last accessed August 2, 2015]

Associated Press (2005) ‘Prosecutors: Lunsford Raped, Buried Alive’, April 20

Associated Press (2012) ‘Police strike: 20,000 march against coalition government’s police reforms’, May 10

BBC News (2013) ‘Theresa May: Tories to Consider Leaving European Convention on Human Rights’, March 9

BBC News (2015) ‘Spending Review: George Osborne Protects Police Funding’, November 25

Beckford, M. (2012) ‘Theresa May Barracked by Police Federation as she Defends Reforms’, The Telegraph, May 16

Bennett, C. (1991) ‘What is Policy Convergence and What Causes it?’, British Journal of Political Science, 21, 215 - 233

CNN (2005a) ‘Sheriff: Evidence Points to Sex Abuse’, March 21

CNN (2005b) 'Murder Charge Brought Against Man Accused in Slaying of Girl', March 23

Conservatives (2014), 'Protecting Human Rights in the UK', Conservative Party Paper [available online at https://www.conservatives.com/~media/files/downloadable%20Files/human_rights.pdf] [last accessed March 19, 2015]

Death Penalty Information Center (2015a) 'States With and Without the Death Penalty' [available online at <http://deathpenaltyinfo.org/states-and-without-death-penalty>] [last accessed October 16, 2015]

Death Penalty Information Center (2015b) 'Aggravating Factors for Capital Punishment by State' [available online at <http://www.deathpenaltyinfo.org/aggravating-factors-capital-punishment-state>] [last accessed October 9, 2015]

Derby, K. (2015) 'David Jolly Introduces 'Thin Blue Line Act' for Cops, Firefighters Killed in Federal Cases', Sunshine State New, February 12

Dominiczak, P. (2014) 'Theresa May still favourite to be next Tory leader among party faithful, poll finds', The Telegraph, December 29

Donohue, J.J. and Wolfers, J. (2005) 'Uses And Abuses of Empirical Evidence in the Death Penalty Debate', *Stanford Law Review*, 58(3), 791–846.

Donohue, J.J. and Wolfers, J. (2006) 'The Death Penalty: No Evidence for Deterrence', *Economist's Voice*, April, 1–6.

EurActiv News (2013), 'Interior Minister Urges Britain to Leave Human Rights Convention', March 11

Eyestone, R. (1977) 'Confusion, Diffusion and Innovation', *American Political Science Review*, 71, 441 - 453

Fagan, J. (2005) *Public Policy Choices on Deterrence and the Death Penalty: A Critical Review of New Evidence* (Testimony before the Joint Committee on the Judiciary of the Massachusetts Legislature on House Bill 3834, 'An Act Reinstating Capital Punishment in the Commonwealth') [Available at: <http://www.deathpenaltyinfo.org/MassTestimonyFagan.pdf>] [last accessed June 26, 2014]

FBI (2013) Uniform Crime Reports [available online at <https://www.fbi.gov/about-us/cjis/ucr/leoka>] [last accessed October 2, 2015]

Fitz-Gibbon, K. (2016) 'Minimum Sentencing for Murder in England and Wales: A Critical Examination 10 Year after the Criminal Justice Act 2003', *Punishment & Society*, 18(1), 47-67

Foreign & Commonwealth Office (2011) 'HMG Strategy for Abolition of the Death Penalty 2010-2015', [available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35448/death-penalty-strategy-oct-11-15.pdf] [last accessed October 3, 2015]

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press

- Garland, D. (2010) *Peculiar Institution: America's Death Penalty in an Age of Abolition*, Oxford: Oxford University Press
- Hastings, M. (2013) 'The danger is we've become immune to human rights lunacy', *Daily Mail*, July 9
- Jones, T. Newburn, T. (2002a) 'Learning from Uncle Sam? Exploring U.S. Influences on British Crime Control Policy', *Governance*, 15(1), 97 – 119
- Jones, T. Newburn, T. (2002b) 'Policy Convergence and Crime Control in the USA and the UK', *Criminology and Criminal Justice*, 2, 173 – 203
- Jones, T. Newburn, T. (2007) 'Symbolizing Crime Control: Reflections on Zero Tolerance', *Theoretical Criminology*, 11(2), 221-243
- Jones, T. Newburn, T. (2013) 'Policy Convergence, Politics, and Comparative Penal Reform: Sex Offender Notification Schemes in the USA and UK', *Punishment and Society*, 15(5), 439-467
- Kirchmeier, J. L. (2006) 'Casting a Wider Net: Another Decade of Legislative Expansion of the Death Penalty in the United States', *Pepperdine Law Review*, 34(1), 1-40
- Kirkup, J. (2013) 'Britain May Need to Withdraw from European Convention on Human Rights, says Cameron', *The Telegraph* September 29
- KKTV News (2002a) 'Third Arrest in Teen's Murder', August 22
- KKTV News (2002b) 'Hanson Murder Investigation', August 29
- McAlinden, A. (2012) 'The Governance of Sexual Offending across Europe: Penal Policies, Political Economies and the Institutionalization of Risk', *Punishment and Society*, 14(2), 166-192
- May, T. (2013) 'Home Secretary speech to Police Federation Annual Conference 2013' [available online at <https://www.gov.uk/government/speeches/home-secretary-speech-to-police-federation-annual-conference-2013>] [last accessed August 18, 2015]
- Ministry of Justice (2016) 'Offender Management Statistics Bulletin, England and Wales', Ministry of Justice, January 28 [available online at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495321/offender-management-statistics-quarterly-bulletin-jul-sep-2015.pdf] [last accessed March 1, 2016]
- Murphy, J. (2015) 'Police Cuts Threat Averted in Wake of Paris Terror', *London Evening Standard*, November 25
- Newburn, T. (2002) 'Atlantic Crossings: 'Policy Transfer' and Crime Control in the USA and Britain', *Punishment and Society*, 4(2), 165-194
- ONS (Office for National Statistics) (2015) 'Statistical Bulletin: Crime in England and Wales, Year Ending March 2015' [available online at <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/year-ending-march-2015/stb-crime-march-2015.html#tab-Violent-crime>] [last accessed July 31, 2015]

- Peachey, P. (2012) 'Theresa May faces calls to resign after being booed offstage at Police Federation address', *Independent*, May 16
- Pettigrew, M. (2015) 'Whole of Life Tariffs in the Shadow of Europe: Penological Foundations and Political Popularity', *Howard Journal of Criminal Justice*, 54(3), 292 – 306
- Police Roll of Honour Trust, enquiry #334135 [on file with the author]
- Pratt, J. (2007) Penal Populism, London: Routledge
- Pratt J. Clark, M. (2005) 'Penal Populism in New Zealand', *Punishment & Society*, 7(3), 303-322
- Rose, R. (1993) Lesson Drawing in Public Policy: A Guide to Learning Across Time and Space, New Jersey: Chatham House
- Sarat, A. (1999) The Killing State: Capital Punishment in Law, Politics, and Culture, Oxford: Oxford University Press
- Sharon, C. C. (2011) 'The "Most Deserving" of Death: The Narrowing Requirement and the Proliferation of Aggravating Factors in Capital Sentencing Statutes', *Harvard Civil Rights Civil Liberties Law Review*, 46, 232-252
- Shaw, D. (2012) 'Police budget cuts risk to three forces HMIC warns', BBC News, July 2
- Shaw, D. (2013) 'Whole Life Terms for Police Killers – Home Secretary', BBC News, May 15
- Shaw, D. (2015) 'Spending Review: Police Disbelief at 'No Cuts' Decision', BBC News, November 25
- Siddique, H. (2014) 'Police Federation 'Angry and Bewildered' at Theresa May Speech', *The Guardian*, May 22
- Simon, J. Spaulding, C. (1999) 'Tokens of Our Esteem: Aggravating Factors in the Era of Deregulated Death Penalties' in Sarat, A. The Killing State: Capital Punishment in Law, Politics, and Culture, Oxford: Oxford University Press
- Slack, J. (2011) 'Euro judges trample UK sovereignty and insist: you will give prisoners the vote', *Daily Mail*, April 13
- Travis, A. (2013) 'Police forces will struggle to make further cuts, says watchdog', *Guardian*, July 18
- Travis, A. (2015) 'Stop Scaremongering and Prepare for Further Cuts, Theresa May Tells Police', *The Guardian*, May 20
- U.S. Department of Justice (2013) 'Homicide in the U.S. Known to Law Enforcement, 2011' [available online at <http://www.bjs.gov/content/pub/pdf/hus11.pdf>] [last accessed October 9, 2015]
- Van Zyl Smit, D. (2010) 'Outlawing Irreducible Life Sentences: Europe on the Brink?' *Federal Sentencing Reporter*, 23(1), 39 – 48
- Wardrop, M. and Gardham, D. (2010) 'Funding cuts will leave Britain vulnerable to terrorist attack, anti-terrorist chief warns', *Telegraph*, July 2

Whitehead, T. (2015) 'Theresa May: Police spending will have to come down again', The Telegraph, May 20

Williams, K. (2000) 'The Deregulation of the Death Penalty', *Santa Clara Law Review*, 40, 677-728

Zubeck, P. Willett, A. (2002) 'Slain Fetus Fuels Calls for Law', The Gazette (Colorado Springs), October 13

Cases Cited:

R (on the application of Anderson) v. Home Secretary [2002] UKHL 46

Vinter and Others v. United Kingdom [2013] ECHR 66069/09

Zant v. Stephens (1982) 456 U.S. 410